

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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ERWIN GRAMPP, derivatively on behalf of  
JBI, INC.,

Plaintiff,

Civil Action No.: 1:12-cv-10495-MLW

vs.

JOHN BORDYNUIK, DR. JACOB SMITH,  
RONALD C. BALDWIN, JR., AMY  
BRADSHAW, JOHN M. WESSON, ROBIN  
BAGAI, GREGORY GOLDBERG, and  
THEODORE J. HENRY,

Motion to Dismiss  
(Leave Granted 7/12/2012)

Defendants,

and

JBI, INC.

Nominal Defendant.

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**INDIVIDUAL DEFENDANTS' MOTION TO DISMISS  
PLAINTIFF'S VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT**

Pursuant to Federal Rules of Civil Procedure 12(b)(2), 12(b)(6), and 23.1, Defendants John Bordyniuk, Dr. Jacob Smith, Ronald C. Baldwin, Jr., Amy Bradshaw, John M. Wesson, Robin Bagai, Gregory Goldberg, and Theodore J. Henry (collectively, the "Individual Defendants") respectfully move the Court to dismiss Plaintiff's Verified Shareholder Derivative Complaint. As grounds therefore, the Individual Defendants state that the complaint is deficient for several reasons. First, the Court lacks personal jurisdiction over all of the Individual Defendants, with the exception of John Bordyniuk. Second, Plaintiff failed to make pre-suit demand on the board of directors of nominal defendant JBI, Inc. ("JBI" or "the Company"), or state with particularity the reasons why such demand would have been futile, as required by Fed.

R. Civ. P. 23.1 and substantive Nevada law. Third, an exculpatory statute and clause in JBI's Articles of Incorporation, as well as Plaintiff's failure to plead a cognizable injury to the Company, preclude liability by the company's officers and directors and require dismissal of Plaintiff's breach of fiduciary duty claims. Fourth, Plaintiff's allegations are insufficiently particularized to satisfy the requirements of Fed. R. Civ. P. 9(b). Fifth, in the alternative, the Individual Defendants state that this action should be stayed because it conflicts with a class action securities case pending in Nevada and a Securities and Exchange Commission action pending in Massachusetts.

WHEREFORE, the Individual Defendants respectfully move the Court to dismiss Plaintiff's Verified Shareholder Derivative Complaint, with prejudice, or in the alternative, stay this action pending resolution of the SEC and class actions.

**REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1(D), the Individual Defendants respectfully request oral argument on this motion.

Respectfully submitted,

/s/John G. Wheatley  
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Jr., Amy Bradshaw, John M. Wesson, Robin Bagai, Gregory  
Goldberg, and Theodore J. Henry*

Dated: July 27, 2012

**LOCAL RULE 7.1(A)(2) CERTIFICATE**

I hereby certify that I conferred with opposing counsel on July 24, 2012, in a good faith attempt to resolve or narrow the issues presented by this motion.

/s/ John G. Wheatley

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent via U.S. first class mail to those indicated as non-registered participants on July 27, 2012.

/s/ John G. Wheatley